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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/756,778

01/14/2004

Jean-Charles Cote

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12/05/2006

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CANADA

EXAMINER

ROOKE, AGNES BEATA

ART UNIT

PAPER NUMBER

1656

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/756,778

Applicant(s)

COTE ET AL.

Examiner

Agnes B. Rooke

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 3, 16-18 and 22.
Claim(s) withdrawn from consideration: 9-13.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Number 3 above.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

Continuation of 3. NOTE: New Rejections and Objections:

Claim 3 would be rejected under 35 U.S.C. 112(1) written description, since different fragments are claimed (fragments of a fragment). Examiner interprets the claim meaning, as claiming an isolated Cry31Aa fragment that comprises another fragment (a polypeptide that has 97% identity to the SEQ ID NO:8 of Cry31Aa2 polypeptide). Thus, this language in the claim does not satisfy the written description requirement since all possible combinations of a fragment of Cry31Aa with another fragment of Cry31Aa2 polypeptide are not disclosed in the specification.

Claim 3 would be rejected under 35 U.S.C. 112(2) since the full spelling of the cancer names: Hela, Sawano, TCS, MOLT-4, HL-60, Jurkat, A549, Hep-G2 and Caco-2 should be provided from the specification. Also, claim 3 would be rejected under 112(2) since the fragments of the polypeptides claimed are indefinite and open to interpretation, for example, a fragment having 97% identity to a fragment of SEQ ID NO:8.

Claims 16, 17, 18, and 22 would also be rejected since they depend from rejected claim 3 and do not cure the deficiencies.

Moreover, claims refer to "an amino acid" where the phrase reads on different fragments of a polypeptide or even a single amino acid in a polypeptide. Thus the phrase should be changed to "the amino acid."

Further, a new search would be required to identify 97% to a fragment of SEQ ID NO:8, for example.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The Rejection of claim 3, under 35 U.S.C. 112, second paragraph in regards to "activated Cry" and proper labeling is withdrawn in view of the amendments.

The Rejections of claims 3 and 16-22, under 35 U.S.C. 112, first paragraph, in regards to "activated Cry polypeptide" and "human cancer cells" are withdrawn in view of the amendments.



KAREN COCHRANE CARLSON, PH.D
PRIMARY EXAMINER